IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24061 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMLESH @ KAMLI DAYARAM JASWANI(SINDHI) - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 16/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner – detenu has challenged his detention order dated 30-11-05 by

which he is detained under the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to two criminal cases pending against the petitioner under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor.

Learned advocate for the petitioner submitted that except two criminal cases, there is not even a statement of any independent witness for coming to the conclusion that the activities of the petitioner are prejudicial to public order or even tempo of public is disturbed by the said activities. It is submitted that at the most it can be said that the petitioner has violated law and order, and it cannot be said that there is any breach of public order. Learned advocate further submitted that the petitioner was already arrested and was in judicial custody. He further submitted that although the Detaining Authority has observed in the grounds of detention that though the detenu is under judicial custody, he is likely to be released on bail and will continue the same activities, the authority has not stated as to on what material he has come to such a conclusion that on presentation of application for bail, the detenu may be released on bail. No particulars in this behalf are given in the grounds of detention.

It is not in dispute that except two criminal

cases, there is neither any statement of any witnesses nor any documents on the record to suggest that the activities of the petitioner prejudicially affect public health or that by the said activities, the even tempo of public is disturbed. The offence registered against the petitioner is under the Bombay Prohibition Act. In that view of the matter, at the most it can be said that the petitioner has violated law and order, and not public order. Moreover, there is nothing on the record to suggest as to on what basis the detaining authority has come to a conclusion that the petitioner is likely to be granted bail on presentation of the bail application.

It is also submitted by the learned advocate for the petitioner that there is no credible material to show that by dealing in the so called liquor, the petitioner has tried to harm public health. He further submitted that there is no report of any laboratory to the effect that consumption of the so called liquor is dangerous to public health so as to attract the provisions of the Act.

In order to substantiate his say, learned advocate for the petitioner has relied upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822 : (2005) 3 SCC 663 In the aforesaid case, the Supreme Court has observed as under in paragraphs 7 and 8 :

> “7. We do not think this argument of the learned counsel can be accepted. If the

> detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.
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> 8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of such material should be given to the detenu."

Having gone through the records, there is nothing to show that the activities of the petitioner is likely to prejudicially affect public health. There is no credible material from which it can be said that the activities of the petitioner is

prejudicial to public health. The petition is required to be allowed as from the available records it cannot be said that the activities of the petitioner is against public health. The offences registered against the petitioner are under the Bombay Prohibition Act. In that view of the matter, at the most it can be said that the petitioner has violated law and order, and not public order.

Learned Assistant Government Pleader is not in a position to substantiate his say that the activities of the petitioner are prejudicial to public health or that the petitioner has violated public order.

In the result, the petition is allowed. Order of detention passed against the petitioner dated 30.11.2005 is quashed and set aside. The petitioner detenu: **KAMLESH @ KAMLI DAYARAM JASWANI(SINDHI)** is ordered to be released forthwith unless he is required in connection with any other offence.

Learned advocate for the petitioner makes a voluntary statement that the detenu will not enter Ahmedabad Police Commissionerate limits till 31st August 2006. This voluntary statement of learned advocate for the petitioner is recorded. It is for the Learned Assistant Government Pleader to inform the concerned authorities about this voluntary statement.

Rule is made absolute, with no order as to costs.

[P. B. MAJMUDAR, J.]

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